Appendix

We present herewith our reply to the arguments of counsel not covered by the foregoing.

Knowledge of Law.

We quote from page 12 of the Fleishhacker brief:

> ". . . it is an elementary proposition that all shareholders of the consolidated banks *were charged with knowledge of the law, including the rights accorded them thereby.*"

There is a general presumption that "all persons know the law". This means that ignorance of the law is no defense.

Counsel seek to apply this presumption in reverse. They use it to supply a fact which does not exist. *Mr. Denicke and Mrs. Doble were in fact ignorant regarding the nature and extent of their right of redemption.* They were subjected to a forfeiture imposed by federal law. They became shareholders in the consolidated bank by a failure to exercise redemption rights.

This suit is to recover damages resulting from that forfeiture. The defendants are directors responsible. They induced that forfeiture. At pages 17-20 of the appendix to our petition in Doble v. Buck, No. 197, we cite authority to sustain such an action.

The cause of action is federal. Directors are prohibited from violating the National Bank Act. They are liable for damages resulting from such violations (12 US CA 93).

In denying liability, respondents raise other questions which are also federal, viz.:

1. Whether a stockholder who has been subjected to a forfeiture of the redemption right granted by 12 USCA 34(a), can sue directors guilty of inducing that forfeiture by conduct in violation of federal statute.

2. Whether this section prevents such shareholder from pleading ignorance—where such ignorance is a fact, and the damage sustained is the result?

3. Whether Congress, in enacting this section, intended to create any presumption which would prevent a shareholder from making that plea?

We plead a cause of action based on this theory. We allege ignorance, *as a fact*. We deny the right of these directors to avoid responsibility by seeking shelter in a legal presumption.

Respondents are compelled to take an opposite view. These questions can only be answered by an interpretation of the federal law. Necessarily there was original jurisdiction in the District Court.

Respondents' Cases.

Counsel cite a number of federal cases holding that ignorance will not relieve a party of the consequences imposed by a statute. There is no doubt regarding the correctness of that principle. However, it has no present application.

Under 12 USCA 34(a), a failure to act resulted in the imposition of a penalty, namely, a forfeiture of redemption rights. These suits are brought to recover damages based on that forfeiture. We admit that it occurred. We acknowledge that the consolidation has become a fact. Our charges involve individuals and not the corporation. Respondents' cases may all be distinguished on this ground.[22]

Ignorance of Rights—Relation to Case.

We charge violations of federal statute that are affirmative. The documents evidencing these overt acts are attached to the pleadings.

Counsel seek to divert attention from that fact by suggesting that this case rests upon ignorance of the law.

Ignorance is an element of the case for one reason only. It is clear that no damage could have resulted from this

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[22]*Texas Pacific v. Pottorf*, 63 Fed. 2d 1, holds that a bank deposit is subject to federal regulations regardless of intent of parties; *Pickett v. Trixler*, 93 Fed. 2d 178, holds that contract in conflict with federal law involving bank receivership will be set aside; *Littrell v. Craig*, 1 Fed. Supp. 491, holds that by failure to dissent, a stockholder became automatically the holder of shares in a bank formed by merger, with stockholders' liability for the obligations thereof. Case does not involve claim for damages against directors, nor is there any charge that loss of rights was occasioned by conduct of any officer of any bank affected; *Beechwood Securities Corp. v. Associated Oil*, 104 Fed. 2d 537, holds that a stockholder who lost redemption rights could not ordinarily follow his investment for the purpose of setting aside a merger. We have not attacked the consolidation. We accept it and sue for the damage. A totally different question is presented. *National Supply Co. v. Stanford*, 134 Fed. 2d 689, is similar. The stockholder sued the new corporation for a return of his capital. We refrain from taking action that will involve the corporate structure. Only individuals are charged with liability.

conduct if petitioners had been aware of their rights. Ignorance was pleaded to meet that defense.

The conduct which violated the federal law was positive and affirmative. The overt acts have been specified.

Alleged Conflict between Denicke and Doble Claims.

Mr. Denicke sued to recover the difference between the balance sheet value of Anglo California Trust Co. before merger, and the actual market value of the stock received when the plan became effective. Our investigation indicates that this prior value was the true worth of that stock.

Mrs. Doble held shares in the Anglo & London Paris National Bank—the other institution participating in this plan. One shareholder of that bank discovered the fraud in time. He demanded redemption and was paid the sum claimed by Mrs. Doble. The substandard assets in that bank amounted to millions of dollars. A secret trust was created to contain these depreciated items. The contract provides for that trust to continue for five years after merger.[23] There has never been an accounting. The "securities" and other property going into that "trust" disappeared like water running into the sands of the desert. These defendants have refused to permit an accounting. It may be that subsequent misconduct involving that trust will explain a part of Mrs. Doble's loss.

It is entirely possible for stockholders of both banks to have an action as a result of this merger. The directors'

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[23]See Contract Sec. 6—Buck R 51-54; Brigham R 52-55.

liability was an asset of the bank which published a false statement. Substantial recovery on that liability might have brought the value up to something like the figure carried on the books.

Clearly Mr. Denicke sustained a loss in being drawn into that situation. It does not lie with respondents or their counsel to suggest any conflict or inconsistency in these claims, where they are themselves responsible for a refusal to permit an audit.[24]

[24] "* * * plaintiff was hampered from further investigation by Chickering & Gregory who sought to impede his efforts and to prevent him from getting at additional facts (Brigham R 43).